

AMENDED IN SENATE MAY 10, 2011

**SENATE BILL**

**No. 643**

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**Introduced by Senator Correa**

February 18, 2011

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An act to amend Sections 11346.2 and 11346.5 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 643, as amended, Correa. Administrative procedures.

(1) Existing law requires every state agency subject to the Administrative Procedures Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. Existing law also requires that the initial statement of reasons include, among other things, facts, evidence, documents, testimony, or other evidence on which the agency relies to support a specified determination.

This bill would additionally require that if the proposed regulation impacts housing, the initial statement of reasons include the estimated cost *and benefits* of compliance and the related assumptions used in determining that estimate.

(2) Existing law requires every state agency to provide notice of the proposed adoption, amendment, or repeal of a regulation and requires a designated agency officer to make publicly available the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

The bill would require that in making the evaluation available to the public, the agency officer include the estimated costs *and benefits* of compliance.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11346.2 of the Government Code, as amended by Section 1 of Chapter 398 of the Statutes of 2010, is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the

1 case of a regulation that would mandate the use of specific  
2 technologies or equipment or prescribe specific actions or  
3 procedures, the imposition of performance standards shall be  
4 considered as an alternative.

5 (B) A description of reasonable alternatives to the regulation  
6 that would lessen any adverse impact on small business and the  
7 agency's reasons for rejecting those alternatives.

8 (C) Notwithstanding subparagraph (A) or (B), an agency is not  
9 required to artificially construct alternatives, describe unreasonable  
10 alternatives, or justify why it has not described alternatives.

11 (4) Facts, evidence, documents, testimony, or other evidence  
12 on which the agency relies to support an initial determination that  
13 the action will not have a significant adverse economic impact on  
14 business. If ~~the proposed~~ *a proposed building standard* regulation  
15 impacts housing, the initial statement of reasons shall include the  
16 estimated cost *and benefits* of compliance and the related  
17 assumptions used in determining that estimate.

18 (5) A department, board, or commission within the  
19 Environmental Protection Agency, the Resources Agency, or the  
20 Office of the State Fire Marshal shall describe its efforts, in  
21 connection with a proposed rulemaking action, to avoid  
22 unnecessary duplication or conflicts with federal regulations  
23 contained in the Code of Federal Regulations addressing the same  
24 issues. These agencies may adopt regulations different from federal  
25 regulations contained in the Code of Federal Regulations  
26 addressing the same issues upon a finding of one or more of the  
27 following justifications:

28 (A) The differing state regulations are authorized by law.

29 (B) The cost of differing state regulations is justified by the  
30 benefit to human health, public safety, public welfare, or the  
31 environment.

32 (c) A state agency that adopts or amends a regulation mandated  
33 by federal law or regulations, the provisions of which are identical  
34 to a previously adopted or amended federal regulation, shall be  
35 deemed to have complied with subdivision (b) if a statement to  
36 the effect that a federally mandated regulation or amendment to a  
37 regulation is being proposed, together with a citation to where an  
38 explanation of the provisions of the regulation can be found, is  
39 included in the notice of proposed adoption or amendment prepared  
40 pursuant to Section 11346.5. However, the agency shall comply

1 fully with this chapter with respect to any provisions in the  
2 regulation that the agency proposes to adopt or amend that are  
3 different from the corresponding provisions of the federal  
4 regulation.

5 (d) This section shall be inoperative from January 1, 2012, until  
6 January 1, 2014.

7 SEC. 2. Section 11346.2 of the Government Code, as added  
8 by Section 2 of Chapter 398 of the Statutes of 2010, is amended  
9 to read:

10 11346.2. Every agency subject to this chapter shall prepare,  
11 submit to the office with the notice of the proposed action as  
12 described in Section 11346.5, and make available to the public  
13 upon request, all of the following:

14 (a) A copy of the express terms of the proposed regulation.

15 (1) The agency shall draft the regulation in plain, straightforward  
16 language, avoiding technical terms as much as possible, and using  
17 a coherent and easily readable style. The agency shall draft the  
18 regulation in plain English.

19 (2) The agency shall include a notation following the express  
20 terms of each California Code of Regulations section, listing the  
21 specific statutes or other provisions of law authorizing the adoption  
22 of the regulation and listing the specific statutes or other provisions  
23 of law being implemented, interpreted, or made specific by that  
24 section in the California Code of Regulations.

25 (3) The agency shall use underline or italics to indicate additions  
26 to, and strikeout to indicate deletions from, the California Code  
27 of Regulations.

28 (b) An initial statement of reasons for proposing the adoption,  
29 amendment, or repeal of a regulation. This statement of reasons  
30 shall include, but not be limited to, all of the following:

31 (1) A statement of the specific purpose of each adoption,  
32 amendment, or repeal and the rationale for the determination by  
33 the agency that each adoption, amendment, or repeal is reasonably  
34 necessary to carry out the purpose for which it is proposed.

35 (2) An identification of each technical, theoretical, and empirical  
36 study, report, or similar document, if any, upon which the agency  
37 relies in proposing the adoption, amendment, or repeal of a  
38 regulation.

39 (3) Where the adoption or amendment of a regulation would  
40 mandate the use of specific technologies or equipment, a statement

1 of the reasons why the agency believes these mandates or  
2 prescriptive standards are required.

3 (4) (A) A description of reasonable alternatives to the regulation  
4 and the agency's reasons for rejecting those alternatives.

5 (B) A description of any performance standard that was  
6 considered as an alternative. In the case of a regulation that would  
7 mandate the use of specific technologies or equipment or prescribe  
8 specific actions or procedures, the imposition of performance  
9 standards shall be considered as an alternative.

10 (C) A description of reasonable alternatives to the regulation  
11 that would lessen any adverse impact on small business and the  
12 agency's reasons for rejecting those alternatives.

13 (D) Notwithstanding subparagraph (A), (B), or (C), an agency  
14 is not required to artificially construct alternatives, describe  
15 unreasonable alternatives, or justify why it has not described  
16 alternatives.

17 (5) Facts, evidence, documents, testimony, or other evidence  
18 on which the agency relies to support an initial determination that  
19 the action will not have a significant adverse economic impact on  
20 business. ~~If the proposed~~ *a proposed building standard* regulation  
21 impacts housing, the initial statement of reasons shall include the  
22 estimated cost *and benefits* of compliance and the related  
23 assumptions used in determining that estimate.

24 (6) A department, board, or commission within the  
25 Environmental Protection Agency, the Resources Agency, or the  
26 Office of the State Fire Marshal shall describe its efforts, in  
27 connection with a proposed rulemaking action, to avoid  
28 unnecessary duplication or conflicts with federal regulations  
29 contained in the Code of Federal Regulations addressing the same  
30 issues. These agencies may adopt regulations different from federal  
31 regulations contained in the Code of Federal Regulations  
32 addressing the same issues upon a finding of one or more of the  
33 following justifications:

34 (A) The differing state regulations are authorized by law.

35 (B) The cost of differing state regulations is justified by the  
36 benefit to human health, public safety, public welfare, or the  
37 environment.

38 (c) A state agency that adopts or amends a regulation mandated  
39 by federal law or regulations, the provisions of which are identical  
40 to a previously adopted or amended federal regulation, shall be

1 deemed to have complied with subdivision (b) if a statement to  
2 the effect that a federally mandated regulation or amendment to a  
3 regulation is being proposed, together with a citation to where an  
4 explanation of the provisions of the regulation can be found, is  
5 included in the notice of proposed adoption or amendment prepared  
6 pursuant to Section 11346.5. However, the agency shall comply  
7 fully with this chapter with respect to any provisions in the  
8 regulation that the agency proposes to adopt or amend that are  
9 different from the corresponding provisions of the federal  
10 regulation.

11 (d) This section shall become operative on January 1, 2012.

12 (e) This section shall remain in effect only until January 1, 2014,  
13 and as of that date is repealed, unless a later enacted statute, that  
14 is enacted before January 1, 2014, deletes or extends that date.

15 SEC. 3. Section 11346.5 of the Government Code is amended  
16 to read:

17 11346.5. (a) The notice of proposed adoption, amendment, or  
18 repeal of a regulation shall include the following:

19 (1) A statement of the time, place, and nature of proceedings  
20 for adoption, amendment, or repeal of the regulation.

21 (2) Reference to the authority under which the regulation is  
22 proposed and a reference to the particular code sections or other  
23 provisions of law that are being implemented, interpreted, or made  
24 specific.

25 (3) An informative digest drafted in plain English in a format  
26 similar to the Legislative Counsel's digest on legislative bills. The  
27 informative digest shall include the following:

28 (A) A concise and clear summary of existing laws and  
29 regulations, if any, related directly to the proposed action and of  
30 the effect of the proposed action.

31 (B) If the proposed action differs substantially from an existing  
32 comparable federal regulation or statute, a brief description of the  
33 significant differences and the full citation of the federal regulations  
34 or statutes.

35 (C) A policy statement overview explaining the broad objectives  
36 of the regulation and, if appropriate, the specific objectives.

37 (4) Any other matters as are prescribed by statute applicable to  
38 the specific state agency or to any specific regulation or class of  
39 regulations.

1 (5) A determination as to whether the regulation imposes a  
2 mandate on local agencies or school districts and, if so, whether  
3 the mandate requires state reimbursement pursuant to Part 7  
4 (commencing with Section 17500) of Division 4.

5 (6) An estimate, prepared in accordance with instructions  
6 adopted by the Department of Finance, of the cost or savings to  
7 any state agency, the cost to any local agency or school district  
8 that is required to be reimbursed under Part 7 (commencing with  
9 Section 17500) of Division 4, other nondiscretionary cost or  
10 savings imposed on local agencies, and the cost or savings in  
11 federal funding to the state.

12 For purposes of this paragraph, “cost or savings” means  
13 additional costs or savings, both direct and indirect, that a public  
14 agency necessarily incurs in reasonable compliance with  
15 regulations.

16 (7) If a state agency, in proposing to adopt, amend, or repeal  
17 any administrative regulation, makes an initial determination that  
18 the action may have a significant, statewide adverse economic  
19 impact directly affecting business, including the ability of  
20 California businesses to compete with businesses in other states,  
21 it shall include the following information in the notice of proposed  
22 action:

23 (A) Identification of the types of businesses that would be  
24 affected.

25 (B) A description of the projected reporting, recordkeeping, and  
26 other compliance requirements that would result from the proposed  
27 action.

28 (C) The following statement: “The (name of agency) has made  
29 an initial determination that the (adoption/amendment/repeal) of  
30 this regulation may have a significant, statewide adverse economic  
31 impact directly affecting business, including the ability of  
32 California businesses to compete with businesses in other states.  
33 The (name of agency) (has/has not) considered proposed  
34 alternatives that would lessen any adverse economic impact on  
35 business and invites you to submit proposals. Submissions may  
36 include the following considerations:

37 (i) The establishment of differing compliance or reporting  
38 requirements or timetables that take into account the resources  
39 available to businesses.

1 (ii) Consolidation or simplification of compliance and reporting  
2 requirements for businesses.

3 (iii) The use of performance standards rather than prescriptive  
4 standards.

5 (iv) Exemption or partial exemption from the regulatory  
6 requirements for businesses.”

7 (8) If a state agency, in adopting, amending, or repealing any  
8 administrative regulation, makes an initial determination that the  
9 action will not have a significant, statewide adverse economic  
10 impact directly affecting business, including the ability of  
11 California businesses to compete with businesses in other states,  
12 it shall make a declaration to that effect in the notice of proposed  
13 action. In making this declaration, the agency shall provide in the  
14 record facts, evidence, documents, testimony, or other evidence  
15 upon which the agency relies to support its initial determination.

16 An agency’s initial determination and declaration that a proposed  
17 adoption, amendment, or repeal of a regulation may have or will  
18 not have a significant, adverse impact on businesses, including the  
19 ability of California businesses to compete with businesses in other  
20 states, shall not be grounds for the office to refuse to publish the  
21 notice of proposed action.

22 (9) A description of all cost impacts, known to the agency at  
23 the time the notice of proposed action is submitted to the office,  
24 that a representative private person or business would necessarily  
25 incur in reasonable compliance with the proposed action.

26 If no cost impacts are known to the agency, it shall state the  
27 following:

28 “The agency is not aware of any cost impacts that a  
29 representative private person or business would necessarily incur  
30 in reasonable compliance with the proposed action.”

31 (10) A statement of the results of the assessment required by  
32 subdivision (b) of Section 11346.3.

33 (11) The finding prescribed by subdivision (c) of Section  
34 11346.3, if required.

35 (12) A statement that the action would have a significant effect  
36 on housing costs, if a state agency, in adopting, amending, or  
37 repealing any administrative regulation, makes an initial  
38 determination that the action would have that effect. In addition,  
39 the agency officer designated in paragraph (14), shall make  
40 available to the public, upon request, the agency’s evaluation, if



1 any, of the effect of the proposed regulatory action on housing  
2 costs, including the estimated cost of compliance and benefits of  
3 *compliance with a building standard regulation*.

4 (13) A statement that the adopting agency must determine that  
5 no reasonable alternative considered by the agency or that has  
6 otherwise been identified and brought to the attention of the agency  
7 would be more effective in carrying out the purpose for which the  
8 action is proposed or would be as effective and less burdensome  
9 to affected private persons than the proposed action.

10 (14) The name and telephone number of the agency  
11 representative and designated backup contact person to whom  
12 inquiries concerning the proposed administrative action may be  
13 directed.

14 (15) The date by which comments submitted in writing must  
15 be received to present statements, arguments, or contentions in  
16 writing relating to the proposed action in order for them to be  
17 considered by the state agency before it adopts, amends, or repeals  
18 a regulation.

19 (16) Reference to the fact that the agency proposing the action  
20 has prepared a statement of the reasons for the proposed action,  
21 has available all the information upon which its proposal is based,  
22 and has available the express terms of the proposed action, pursuant  
23 to subdivision (b).

24 (17) A statement that if a public hearing is not scheduled, any  
25 interested person or his or her duly authorized representative may  
26 request, no later than 15 days prior to the close of the written  
27 comment period, a public hearing pursuant to Section 11346.8.

28 (18) A statement indicating that the full text of a regulation  
29 changed pursuant to Section 11346.8 will be available for at least  
30 15 days prior to the date on which the agency adopts, amends, or  
31 repeals the resulting regulation.

32 (19) A statement explaining how to obtain a copy of the final  
33 statement of reasons once it has been prepared pursuant to  
34 subdivision (a) of Section 11346.9.

35 (20) If the agency maintains an Internet Web site or other similar  
36 forum for the electronic publication or distribution of written  
37 material, a statement explaining how materials published or  
38 distributed through that forum can be accessed.

39 (b) The agency representative designated in paragraph (14) of  
40 subdivision (a) shall make available to the public upon request the

1 express terms of the proposed action. The representative shall also  
2 make available to the public upon request the location of public  
3 records, including reports, documentation, and other materials,  
4 related to the proposed action. If the representative receives an  
5 inquiry regarding the proposed action that the representative cannot  
6 answer, the representative shall refer the inquiry to another person  
7 in the agency for a prompt response.

8 (c) This section shall not be construed in any manner that results  
9 in the invalidation of a regulation because of the alleged inadequacy  
10 of the notice content or the summary or cost estimates, or the  
11 alleged inadequacy or inaccuracy of the housing cost estimates, if  
12 there has been substantial compliance with those requirements.